

SENATE BILL 3046

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, Part 6 and Title 40, Chapter 6, relative to the tracking of certain motor vehicles.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, Part 6, is amended by adding the following as a new section:

39-13-609.

(a) As used in this section, “tracking device” means an electronic or mechanical device which permits the tracking of a person or object.

(b) Except as provided in subsection (c), it is an offense for a law enforcement or investigative officer, or any person acting on behalf of or with the consent or knowledge of, a law enforcement or investigative officer, to install and use a mobile tracking device on or in any moveable item, container, vehicle or other vessel with the intent to:

(1) Monitor or record the whereabouts of the person or object upon which or in which the tracking device is installed; or

(2) Obtain information or evidence about a person or object that could otherwise be obtained by lawful surveillance.

(c) A law enforcement or investigative officer may obtain a court order permitting the installation of a tracking device by following the procedure set out in title 40, chapter 6, part 4, for obtaining an order for use of such device.

(d) A violation of this section is a Class C misdemeanor and any evidence obtained as the result of the unauthorized tracking shall be inadmissible against the person or persons surveilled.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 6, is amended by adding the following as a new part 4:

40-6-401.

In order to protect the privacy of citizens, to protect the integrity of the court and administrative proceedings, to define, on a uniform basis, the circumstances under which a district attorney general may apply to a court of competent jurisdiction for the installation and use of a mobile tracking device, to define the circumstances under which a judge in a court of competent jurisdiction may authorize the installation and use of a mobile tracking device, and to prohibit any unauthorized surveillance or use of such a device, it is necessary for the general assembly to define the circumstances and conditions under which the collection of information by use of a tracking device may be lawful. In defining these circumstances, the general assembly seeks to strike a balance between an individual's right to privacy and society's legitimate concern in being protected from criminal activity.

40-6-402. As used in this part and § 39-13-609, unless the context otherwise requires:

(1) "Aggrieved person" means a person whose whereabouts were monitored or recorded by a tracking device;

(2) "Attorney general and reporter" means the attorney general and reporter of Tennessee;

(3) "Contents," when used with respect to information collected by tracking device, includes any information concerning the substance, purport or meaning of that communication;

(4) "Court of record" means any circuit or criminal court in the state of Tennessee;

(5) "District attorney general" means the district attorney general of any judicial district where jurisdiction exists to prosecute an offense that is grounds for a tracking device order under § 40-6-405, or the judicial district where the collection of information by tracking device is to occur;

(6) "Investigative or law enforcement officer" means:

(A) Any officer of the state or a political subdivision of the state, who:

(i) Is empowered by law to conduct investigations of or to make arrests for offenses enumerated in § 40-6-405; and

(ii) Has successfully completed a training course on the use of a tracking device approved by the Tennessee peace officer standards and training commission or the Tennessee bureau of investigation; or

(iii) Any attorney authorized by law to prosecute those offenses;

(7) "Judge of competent jurisdiction" means a judge presiding over any court of record as defined in this part and §§ 39-13-601 -- 39-13-603 in this state;

(8) "Record" means the tangible medium upon which tracking data is recorded or otherwise stored; and

(9) "Tracking device" means an electronic or mechanical device which permits the tracking of a person or object.

40-6-403.

(a) Each application for an order authorizing the use of a tracking device shall be made in writing upon oath or affirmation to a judge of competent jurisdiction in the district where the collection of information or evidence by tracking device is to occur, or in any district where jurisdiction exists to prosecute the underlying offense to support a tracking device order under § 40-6-405. The application shall state the investigative or law

enforcement officer's authority to make the application and shall include the following information:

(1) Identity of the investigative or law enforcement officer making the application, and the district attorney general authorizing the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including:

(A) Details as to the particular offense that has been, is being, or is about to be committed;

(B) A particular description of the nature and location of the facilities from which or the place where the information is to be collected;

(C) A particular description of the type of information sought to be collected; and

(D) The identity of all persons, if known, committing the offense and whose information is to be or may be collected;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the tracking device is required to be maintained. If the nature of the investigation is such that the authorization for a tracking device should not automatically terminate when the described type of information has been first collected, a particular description of facts establishing probable cause to believe that additional information of the same type will be collected thereafter;

(5) A full and complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, made to any judge for authorization to track, monitor, surveil, or record the whereabouts of the same persons, facilities, or places specified in the application, and the action taken by the judge on each application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the collection of information, or a reasonable explanation of the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Upon an application the judge may enter an ex parte order, as requested or as modified, authorizing the installation and use of a tracking device within the district in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in § 40-6-305;

(2) There is probable cause for belief that particular information concerning that offense will be obtained through the use of a tracking device;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) There is probable cause for belief that the vehicle or person to be tracked is being used, or about to be used, in connection with the commission of the offense.

(d) Each order authorizing the use of a tracking device to obtain information or evidence under this part shall specify:

(1) The identity of all persons, if known, whose information is to be or may be collected;

(2) The nature and location of the facilities from which or the place where the information is to be collected;

(3) A particular description of the type of information sought to be collected, and a statement of the particular offense to which it relates;

(4) The identity of the agency authorized to install and use the tracking device, and the identity of the person authorizing the application; and

(5) The period of time during which the tracking device is authorized, including a statement as to whether or not the authorization shall automatically terminate when the described information has been first obtained.

(e) No order entered under this section may authorize or approve the installation and use of a tracking device for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than twenty-one (21) days. The twenty-one day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct the collection of information under the order or ten (10) days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (a) and the court making the findings required by subsection (c). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than twenty-one (21) days. Every order and extension of an order shall contain a provision that the authorization to install and use a tracking device shall be executed as soon as practicable, shall be conducted in a way as to minimize the collection of information not otherwise subject to collection under this

part, and must terminate upon attainment of the authorized objective, or in any event in twenty-one (21) days.

(f)

(1) Any information collected by tracking device under this part shall be recorded and maintained in tangible form. The record shall be compiled in a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of the order, the record shall be made available to the judge issuing the order and sealed under the judge's direction. All records of information collected by tracking device shall be treated as confidential and shall not be open for inspection by members of the public. Custody of the record shall be wherever the judge orders. The record shall not be destroyed except upon an order of the issuing judge and in any event shall be kept for one (1) year; provided, that upon the agreement of the person whose information was collected, or that person's counsel, and the appropriate district attorney general, the issuing judge may order the destruction of all records at any time. Upon an order of the issuing judge, the contents the tracking device records may be unsealed and used while giving testimony. The presence of the seal provided for by this subsection (f), or a satisfactory explanation for the absence of the seal, shall be a prerequisite for the use or disclosure of the information or evidence derived therefrom under § 40-6-404. All information collected by tracking device that is not disclosed while giving testimony retains its confidential character and shall not be open for inspection by members of the public. Immediately following duplication or use while giving testimony, the recordings shall be returned to the judge issuing the order and resealed or destroyed under the judge's direction.

(2) Applications made and orders granted under this section shall be treated as confidential and shall not be open for inspection by members of the public. Applications and orders shall be sealed by the judge and custody shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge and in any event shall be kept for one (1) year. Upon the agreement of the person named in the order or application, or that person's counsel, and the appropriate district attorney general, the issuing judge may order the destruction of such applications and orders at any time.

(3) Any violation of this subsection (f) may be punished as contempt of the issuing or denying judge.

(4) Within a reasonable time, but not later than ninety (90) days after the termination of an order of approval under subsections (c) and (d), or an order authorizing an extension under subsection (e), or the denial of an order under subsection (c), the issuing or denying judge shall cause an inventory to be served on the persons named in the order or application and any other parties subject to surveillance by tracking device as determined by the judge exercising judicial discretion in the interest of justice. The inventory shall include notice of:

(A) The fact of entry of the order or the application;

(B) The date of the entry and the period of authorization for use of a tracking device, or the denial of the application; and

(C) The fact that during the period information or evidence was or was not collected.

(5) The judge, upon the filing of a motion, may, in the judge's discretion, make available to the person or the person's counsel for inspection any portions of the collected information, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this subsection (f) may be postponed for ninety (90) days. At the end of this period, the judge may allow additional ninety-day extensions, but only on further showing of good cause.

(g) The contents of any tracking device information or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a state court unless each party, not less than ten (10) days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the tracking device was authorized. This ten-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the information ten (10) days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(h)

(1)

(A) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state or a political subdivision of the state may move to suppress any information collected by tracking device, or evidence derived therefrom, on the grounds that:

(i) The information was unlawfully collected;

(ii) The order of authorization under which it was collected is insufficient on its face; or

(iii) The collection was not made in conformity with the order of authorization.

(B) The motion shall be made before the trial, hearing or proceeding, unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the collected information, or evidence derived therefrom, shall be treated as having been obtained in violation of this part. The judge, upon the filing of a motion by the aggrieved person, may, in the judge's discretion, make available portions of the information collected, or evidence derived therefrom, as the judge determines to be in the interest of justice.

(2) In addition to any other right to appeal, the state has the right to appeal from an order granting a motion to suppress made under subdivision (h)(1), or the denial of an application for an order of approval, if the district attorney general certifies to the judge or other official granting the motion or denying the application that the appeal is not taken for purposes of delay. The appeal shall be taken within thirty (30) days after the date the order was entered and shall be diligently prosecuted.

40-6-404.

(a) Any investigative or law enforcement officer who, by any means authorized by this part, has obtained knowledge of information obtained by use of a tracking device, or evidence derived therefrom, may disclose such information to another investigative or

law enforcement officer to the extent that disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any investigative or law enforcement officer who, by any means authorized by this part, has obtained knowledge of the information obtained by use of a tracking device, or evidence derived therefrom, may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

(c) Any person who has received, by any means authorized by this part, any information or evidence collected in accordance with this part, may disclose the contents of that information or derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of this state or a political subdivision of the state, or of the United States, or a political subdivision of the United States.

(d) Nothing in this part shall be construed as permitting the collection of information that is made privileged by law unless the judge issuing the order for the collection finds probable cause to believe that all parties to the privileged information are criminally responsible for the commission of a homicide offense, conspiracy to commit a homicide offense or commission of a violation of § 39-17-417(j).

40-6-405.

A district attorney general may apply to a judge of competent jurisdiction for, and the judge may grant, in conformity with this part, an order authorizing the use of a tracking device by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made when the collection of information by tracking device may provide evidence of:

- (1) The commission of criminal homicide, as defined in § 39-13-201;
- (2) Criminal conspiracy, as defined in § 39-12-103, to commit criminal homicide;
- (3) The commission of a violation of § 39-17-417(j); or

(4) The commission of, or conspiracy to commit, a criminal gang offense by a criminal gang member, as defined in § 40-35-121.

SECTION 3. This act shall take effect July 1, 2012, the public welfare requiring it.